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August 18, 1959

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**ARIZONA ATTORNEY GENERAL**

Honorable Robert W. Prochnow  
Member Arizona State Senate  
Flagstaff, Arizona

Dear Senator Prochnow:

You have requested an opinion from the Attorney General as to the liability of the sheriff for accidents occurring to prisoners in his charge while performing work in and about public places in the county and state.

A.R.S. § 13-1646 provides that when persons are sentenced for misdemeanors to serve a number of days in the county jail, the court imposing the sentence may order that the person sentenced be kept at hard labor during the term of the sentence or for any part thereof.

A.R.S. § 11-455 provides that when a person is sentenced to hard labor, as provided by the foregoing section, and the type of labor is provided by the sentence, the sheriff shall keep the prisoner constantly employed during every day, Sunday excepted. This section further provides that the labor, with consent of the Board of Supervisors, may be performed either inside or outside the county jail. This section further provides that the sheriff may, under the direction of the Board of Supervisors, employ (sic) prisoners who have been sentenced to imprisonment in the county jail to such labor or occupation in or about the courthouse or jail as the sheriff deems necessary, although such prisoners have not been sentenced to hard labor as provided by A.R.S. § 13-1646.

The statutes referred to are directed by the legislature to the courts, board of supervisors, and sheriffs and require persons sentenced to county jails for misdemeanors when so directed to work within or without county jails. Under such circumstances, the

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sheriff is under legislative direction to work prisoners as directed by the foregoing statutes when they are sentenced to hard labor. Therefore, the sheriff is not responsible to the prisoners for accidents and injuries occurring to them while engaging in such work.

A similar situation appears in the case of Kebert v. Board of County Commissioners (1931) 134 Kan. 401, 5 P.2d 1085. The court held that a sheriff was not liable where the prisoner was killed when a ditch in which he was working caved in on him, the plaintiffs basing their cause of action against the sheriff on his alleged negligence in not furnishing the prisoner a safe place in which to work. The court referred to the statutory provision that every able-bodied male prisoner confined in the county jail must work at hard labor every working day under the direction of the county commissioners and stated that under the terms of this statute the only connection the sheriff had with this prisoner was to take him to work from the jail, bring him back, and see that he did not run away while out of the jail and stated further that the sheriff had no control over what the prisoner did or the conditions under which he did it.

A similar situation exists under the statutes of this state because the prisoners work while in custody of the sheriff but under the direction of the court or the Board of Supervisors.

Very truly yours,

WADE CHURCH  
The Attorney General

LESLIE C. HARDY  
Chief Assistant  
Attorney General

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